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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,494	02/04/2002	Brent L. Bucks	A1-1431	3370
27127	7590	01/04/2005		EXAMINER
HARTMAN & HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383				HAMILTON, ISAAC N
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/072,494	BUCKS, BRENT L.
	Examiner	Art Unit
	Isaac N Hamilton	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 October 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 4-6, 12-20, 24-26 and 32-40 is/are allowed.
- 6) Claim(s) 1-3, 7-11, 21-23 and 27-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/09/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 8, 21, 22 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawakami (JP63222038A). Kawakami discloses passage through which product 1 feeds in figure 1; cutting means 30, 32, 34, 36; opening at the bottom of the passage; first portion 44, 46; second portion adjacent element 48; guide means is the surface of the first portion 44, 46; means for applying a force 48a, 48, 48b, 50; tubular member 42; first wall portion on the right side of tubular member 42 in figure 1; second wall portion on the left side of tubular member 42 in figure 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 2, 8, 9, 11, 21, 22, 28, 29 and 31 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Bittner (4,683,790) in view of Kawakami. Bittner discloses tubular

member/passage 3; cutting means 12; second portion/second wall portion is the portion of

passage 3 shown in figure 1; first portion/first wall portion is portion of passage 3 that is cut

away in figure 1; guide means is the surface of the first portion; hub at vertical axis 10, 11, 13,

24; blades 19; means for delivering shown in figure 1 attached to the top portion of the passage

3. Bittner does not teach a means for applying a force, however, Kawakami teaches means for

applying a force 48, 48a, 48b, 50. It would have been obvious to provide a means for applying a

force in Bittner as taught by Kawakami in order to supply a downward pressure on any loose or

stingy products that don't initially get cut by the blades. The apparatus in Bittner is capable of

containing stacked products within the passage.

5. Claims 3, 7, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the

combination of Bittner in view of Kawakami. The combination discloses the claimed invention

except for two jets. It would have been obvious to one having ordinary skill in the art at the time

the invention was made to provide two jets, since it has been held that mere duplication of the

essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v.*

Bemis Co., 193 USPQ 8. Kawakami also discloses jets 48a, 48, 48b, 50 in a downward direction

as shown in figure 1.

6. Claims 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the

combination of Bittner in view of Kawakami as applied to claims 1-3, 1-9, 11, 21-23, 27-29 and

31 above, and further in view of Urschel et al (2,961,024), hereafter Urschel. The combination

discloses everything as noted above, but does not disclose cutting edges that produce a v-shaped

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cut. However, Urschel teaches cutting edges 58 that produce a v-shaped cut. It would have been obvious to provide cutting edges that produce a v-shaped cut in the combination as taught by Urschel in order to create an object that is aesthetically pleasing.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 7-11, 21-23, 27-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

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IH

December 27, 2004

B. A.
BOYER ASHLEY
PRIMARY EXAMINER